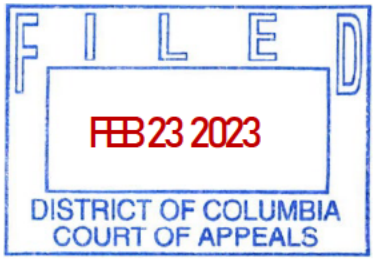
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 19-CV-480

AMOS N. JONES, APPELLANT,

v.

CATHOLIC UNIVERSITY OF AMERICA, APPELLEE.



Appeal from the Superior Court
of the District of Columbia
(2017-CA-008331-B)

(Hon. Heidi M. Pasichow, Trial Judge)

(Argued September 23, 2020 Decided February 23, 2023)

Before EASTERLY and MCLEESE, *Associate Judges*, and RUIZ, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant Amos N. Jones appeals the trial court's dismissal of his claim that appellee Catholic University of America tortiously interfered with Professor Jones's contractual relations with Campbell University. We affirm.

I. Factual and Procedural Background

In pertinent part, the complaint alleges the following. Professor Jones sent an employment application to Catholic, stating that he was an associate professor of law at Campbell University and that he had been promised a tenure appointment at Campbell. Although the application was private according to the Association of American Law Schools (AALS) protocol governing faculty hiring, Dean Attridge of Catholic communicated with Dean Leonard of Campbell regarding the application for employment, without Professor Jones's permission. The day after Catholic received the application, Dean Attridge emailed Professor Jones to inform him that Catholic did not have any open employment opportunities. Twelve minutes after Dean Attridge's email to Professor Jones, Dean Leonard of Campbell informed Professor Jones that his employment contract would not be renewed for the

following year and that he would be terminated at the end of the school year. Catholic "intentionally procured the breach[]" of Professor Jones's employment contract with Campbell.

The trial court dismissed the claim of tortious interference, concluding that the complaint is "devoid of any assertions of fact that [Catholic] 'intentionally procured' the breach of Plaintiff's employment contract or otherwise 'intentionally interfered' with Plaintiff's relationship with Campbell."

II. Analysis

"[W]e review de novo a trial court's dismissal of a complaint." *Grimes v. D.C., Bus. Decisions Info. Inc.*, 89 A.3d 107, 112 (D.C. 2014). To survive a motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Id.* (internal quotation marks omitted).

To state a claim for tortious interference with contract, a plaintiff must plausibly allege, among other things, the "defendant's intentional procurement of the contract's breach." *Cooke v. Griffiths-Garcia Corp.*, 612 A.2d 1251, 1256 (D.C. 1992). We assume for current purposes that this requirement can be met by a plausible allegation that the defendant either "desire[d] to bring . . . about" the breach of contract or "knew that [the defendant's] actions were certain or substantially certain to" cause the breach. *Cf. Whitt v. Am. Prop. Constr., P.C.*, 157 A.3d 196, 202-03 (D.C. 2017) (addressing issue in context of claim of tortious interference with business relations). Professor Jones appears to argue that an inference of the required intent or knowledge can be drawn from the facts that (1) Catholic's dean informed Campbell that Professor Jones was seeking employment at Catholic; (2) under AALS's hiring protocol, that information was private unless Professor Jones authorized Catholic to communicate it; (3) Professor Jones did not provide such authorization; and (4) almost immediately after Catholic's dean informed Campbell, Campbell informed Professor Jones that his employment at Campbell would be terminated at the end of the school year. We conclude that those alleged facts do not plausibly support an inference of intent or knowledge.

The AALS protocol on which Professor Jones relies does not appear to be in the record before this court. Catholic argues that the protocol was not applicable to Professor Jones's application, because Professor Jones did not send the application through the AALS website. Professor Jones has not responded to that argument.

Even if we assume that the protocol was applicable, however, the complaint does not provide any concrete basis for inferring that Catholic's dean either (1) intended that his communication with Campbell would cause Campbell to breach a contract or (2) knew that the communication was certain or substantially certain to cause Campbell to breach a contract. Catholic's dean might have had any number of benign reasons for informing Campbell of Professor Jones's application. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 567-68, 570 (2007) (explaining that when there is an "obvious alternative explanation" for alleged unlawful conduct, plaintiff must allege "enough facts" to "nudge[] the[] claims . . . from conceivable to plausible"). The complaint also alleges no reason why Catholic's dean would have wanted to cause Campbell to breach a contract with Professor Jones. Finally, the mere existence of the AALS protocol (assuming its applicability) does not support a plausible inference that Catholic's dean should have been substantially certain that communicating about Professor Jones's application would cause Campbell to breach a contract.

We therefore agree with the trial court's conclusion that Professor Jones's allegation that Catholic "intentionally procured" the breach of his contract with Campbell lacked sufficient factual basis in the complaint "to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

In arguing to the contrary, Professor Jones relies on two decisions of this court: *Whitt*, 157 A.3d at 202-04, and *NCRIC, Inc. v. Columbia Hosp. for Women Med. Ctr., Inc.*, 957 A.2d 890, 901 (D.C. 2008). We do not view either case as supporting reversal here. *Whitt* addressed whether the plaintiff was entitled to a jury instruction that the defendants (a construction company and a gas company) could be found liable if they knew with substantial certainty that their conduct was interfering with the plaintiff's neighboring business. 157 A.3d at 202-04. In ruling that the instruction should have been given, we relied on evidence that (1) the activities of the defendants over a period of weeks had "blatantly harmful effects" on the plaintiff's business, including at times completely blocking access to the business; (2) the plaintiff regularly complained to one defendant, and those complaints "reached" the other defendant; and (3) the defendants nevertheless continued their activities. *Id.* at 203-04. Nothing comparable was alleged in the present case.

In *NCRIC*, the court held that a defendant who seeks to argue that tortious interference with business relations was justified bears the burden of proving that defense. 957 A.2d at 901. That holding is not relevant to the present case, however,

which does not involve the defense of justification. Rather, the trial court in this case dismissed the claim of tortious interference because the complaint did not plausibly allege one of the elements of that claim: that Catholic's dean intended or knew with substantial certainty that his conduct would lead to a breach of contract. *NCRIC* makes clear that the burden on that issue rests with the plaintiff. *Id.* at 900.

For the foregoing reasons, the judgment of the Superior Court is

Affirmed.

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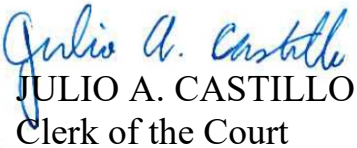

JULIO A. CASTILLO
Clerk of the Court

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Honorable Heidi M. Pasichow

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QMU

Copies e-served to:

A.J. Dhali, Esquire

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